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**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0511 ITC  
Individual Income Tax  
For Tax Year: 1996**

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**ISSUES**

**I. Individual Income tax C Imposition**

**Authority:** IC 6-3-1-8; 26 U.S.C. § 61; Thomas v. Indiana Department of Revenue, 675 N.E.2d 362 (Ind.Tax 1997)

The taxpayer husband and wife protest the imposition of the Indiana Individual Income Tax on their income.

**STATEMENT OF FACTS**

The taxpayers completed their 1996 IT-40 and claimed that they had no Federal Adjusted Gross Income to report at Line 1. As a consequence, the taxpayer reported no Indiana Adjusted Gross Income, however, the taxpayers did list their Indiana State Tax Withheld and Indiana County Tax Withheld on the form. The taxpayers determined that the amount of county tax owed equaled the amount which was withheld. The taxpayers then subtracted the withheld amount from the claimed zero income and claimed a refund. The Department issued the refund before it was recognized that the taxpayers claim of zero income did not match their W-2 statements. The Department correctly

completed the IT-40 per the taxpayer W-2s and billed them for amounts

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owed. The taxpayers then filed an appeal and requested a hearing.

## **I. Individual Income tax C Imposition**

### **DISCUSSION**

The taxpayers argue that they have no Indiana Adjusted Gross Income for 1996. The taxpayers note that the Indiana Code borrows some of its definitions from the Internal Revenue Code. For instance, “gross income” is defined in the Indiana Code (IC 6-3-1-8) as having the meaning “as defined by section 61(a) of the Internal Revenue Code.” Section 61(a) states in part:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items...

The taxpayers make note of the fact that the exact term "wages" is not listed in Section 61 of the Internal Revenue Code as gross income. The taxpayers contend that since line 7 of Form 1040, asks taxpayers to list wages, salaries, and tips is not authorized by the Internal Revenue Code. Box 1 is titled “Wages, Tips, other Compensation” and since the taxpayers believe that wages are not taxable under Section 61, they entered zero on their form. Following this erroneous logic, the taxpayers believe that they had no Federal Adjusted Gross Income to enter on Line 1 of their IT-40 form.

The Indiana Tax Court has dealt with arguments similar to those of the taxpayer. In Thomas v. Indiana Department of Revenue, 675 N.E.2d 362 (Ind.Tax 1997), the Tax Court disposed of the argument that “the federal definition of income does not include wages, salaries, or other forms of compensation.” In dispensing with the argument, the Tax Court noted:

[e]ven assuming the validity of Thomas’s legal framework, monetary payments made in exchange for labor are clearly severed from labor and received or drawn by the recipient for his separate use, benefit, or disposal. In Eisner, itself, the Supreme Court addressed this point, explaining that a monetary dividend payment would constitute income separate and distinct from its capital source. See Eisner v. Macomber, 252 U.S. 189 (1920).

The taxpayers next argued semantics contending that "income from" his services would be taxable, but "income on" individual services would not be gross income. The taxpayer offered an example as follows:

Employee performs service for third party and the third party pays employee's employer for the service. The employer, in turn, pays the employee. Thus, the taxpayer argues that his compensation was not received "from services", but instead, "on services" and were therefore not

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taxable under the Internal Revenue Code. The taxpayer believes that many citizens of Indiana have erroneously overpaid their income taxes in this manner.

This argument is without merit. It is well established that "compensation for services" (as defined in section 61(a) of the Internal Revenue Code) is income regardless as to whether or not it fits within the taxpayer's conceived taxation matrix, which apparently hinges upon whether compensation is received "from services" or "on services."

### **FINDING**

The taxpayer's protest is denied.

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